

Proceeding: INQUIRY CONCERNING THE DEPLOYMENT OF ADVANCED TELECOMMUNICATIONS ☒ Record 1 of 1  
CAPABILITY TO ALL AMERICANS IN A REASONABLE AND TIMELY FASHI  
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**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Inquiry Concerning the Deployment of	)	
Advanced Telecommunications	)	
Capability to All Americans in a	)	CC Docket No. 98-146
Reasonable and Timely Fashion, and	)	
Possible Steps to Accelerate Such	)	
Deployment Pursuant to Section 706 of	)	
the Telecommunications Act of 1996	)	

**COMMENTS OF UTC**

Pursuant to Section 1.415 of the Commission's Rules, UTC<sup>1</sup> hereby offers its Comments on the Notice of Inquiry (NOI), FCC 98-187, released August 7, 1998, in the above-captioned matter.<sup>2</sup> Through this inquiry, the FCC requests comment on a statutory and regulatory framework that will facilitate the deployment of advanced telecommunications capabilities throughout the country, as required by Section 706 of the Telecommunications Act of 1996. Fundamentally, Section 706 requires the FCC to "determine whether advanced telecommunications capability is being deployed to all Americans in a reasonable and timely fashion," and if the FCC's determination is negative, "it shall take immediate action to accelerate deployment of such capability by

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<sup>1</sup> UTC, The Telecommunications Association, was formerly known as the Utilities Telecommunications Council.

<sup>2</sup> By Public Notice, DA 98-1624, the Comment deadline was extended to September 14, 1998.

removing barriers to infrastructure investment and by promoting competition in the telecommunications market.”

By way of introduction, UTC is a not-for-profit association representing the telecommunications interests of approximately 1,000 electric, gas and water utilities and natural gas pipelines (collectively referred to herein as “utilities”). UTC’s members range in size from large, multi-state utilities serving millions of consumers, to small rural electric cooperatives and municipal water or power utilities serving only a few thousand customers each. All utilities depend on telecommunications and information services to support the safe and efficient delivery of public utility service, and most utilities depend on a mix of “public” telecommunications services and the utility’s own privately-owned and -operated communications network. Because of their dual role as both large consumers of telecommunications services, and their actual and potential provision of telecommunications and related services, UTC is pleased to have the opportunity to comment on the NOI.

UTC has consistently supported the position that the telecommunications market should be open to competition, and that regulatory barriers to entry should be eliminated wherever possible. Even as the Commission undertakes to implement the provisions of the Act, UTC continues to support further efforts at eliminating entry barriers. As explained herein, and as noted in the NOI, utilities have certain attributes that make them well-suited to participate in the development of competitive telecommunications markets, provided regulators do not impose disincentives to their full participation.

Utilities have shown increasing interest in communications issues over the last few years for several reasons. First, the availability of reliable communications and information services are key to the safe and reliable provision of energy services, particularly as more automation is introduced in the power delivery systems. UTC therefore supports the FCC's efforts to promote advanced telecommunications services since this will undoubtedly benefit utilities as large telecommunications consumers.

Second, and as explained below, introduction of competition in the energy market is causing utilities to redouble their efforts to improve customer service. Advanced communications services would help utilities improve power quality and reliability, and enhance customer responsiveness.

Third, because of utilities' need to make significant investments in telecommunications infrastructure to meet their internal communications requirements, and because of advances in telecommunications technology, opportunities are available for utilities to jointly deploy communications networks with commercial telecommunications service providers (*e.g.*, interexchange carriers, competitive access providers, and competitive local exchange carriers). These partnering opportunities, which vary from company-to-company as to legal structure and financial relationships, place utilities in the position of serving as "catalysts for competition." That is, even though the utility is not directly involved in the marketing of communications services to consumers, the utility's participation in the partnership allows the "active" partner to

more quickly and efficiently provide competitive communications service to the public. Many of UTC's member companies consider economic development to be part of their mission as a public utility. By helping to develop advanced communications networks, these utilities are helping to improve the economy of the communities they serve, which, in many cases, will yield long-term dividends to the company through attraction of new businesses and residents to the community.

Finally, an increasing number of utilities are entering the competitive communications marketplace, such as through the provision of competitive local exchange services, private-line communications services, Internet access services, cable television service, and commercial mobile radio service. Attached is are examples of some recently announced utility communications ventures and partnerships. The attached list is by no means exhaustive, but helps illustrate that there is no single or simple answer to the question, "How many utilities are getting involved in telecommunications?"

One of the more notable areas in which utilities have participated in telecommunications is in the deployment of fiber optic communications systems. In a 1997 UTC survey of fiber optic deployment by 157 utilities, 100% of the respondents reported that "internal communications" was an "important" or "very important" reason for installing fiber.<sup>3</sup> This statistic was virtually unchanged from UTC's 1994 survey. However, between 1994 and 1997, the respondents attributed a significant increase in importance to leasing reserve capacity or leasing dark fiber. In 1994, 24% of the

respondents indicated that leasing reserve fiber capacity was an “important” or “very important” reason for installing fiber; by 1997, this figure had grown to 46%. Similarly, the leasing of dark fiber was cited as an “important” or “very important” reason by 31% of the respondents in 1994; and by 1997, this had grown to 38%.

Regrettably, UTC’s survey respondents also acknowledged significant regulatory barriers to their ability to provide communications service to third parties. Even in 1997, 40% of the utilities were reporting that they faced restrictions from their state public utility commissions on their ability to provide telecommunications capabilities to third parties. In fact, nearly twice as many municipal utilities reported PUC barriers to entry in 1997 (38%) as they had reported in 1994 (20%).

Historically, most of the fiber optics installed by electric utilities has been along their high voltage transmission corridors. This has also meant that the fiber that was available from utilities for leasing to third parties was generally limited to interexchange carriers. More recently, however, utilities are placing fiber along their distribution routes, which has meant increasing opportunities for the leasing of this fiber to CAPs and CLECs. In 1994, for example, UTC’s survey respondents indicated that where fiber was being marketed, 65% was being marketed along utility transmission routes, with approximately 20% being marketed along distribution routes. By 1997, that gap had

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<sup>3</sup> “1997 Report on Fiber Optic Applications and Developments in the Utility and Gas Pipeline Industries,” (UTC 1997).

started to narrow: 51% of the fiber was being marketed along transmission routes, and 38% was being marketed along distribution routes.<sup>4</sup>

Changes in the energy service marketplace are also causing utilities to view telecommunications in a different light. Whereas the energy industry has been characterized by vertically-integrated organizations providing generation, transmission, and distribution, there is growing consensus within the industry that we may see these organizations evolve into separate companies that provide generation, transmission, distribution, and retailing functions. Many state legislatures and public utility commissions are promoting industry restructuring to increase competition in energy services. These initiatives are increasing the challenges to utilities to operate efficiently and reliably, even as they face the prospect of being structurally pulled apart, and of diversifying their product and service offerings.

UTC applauds the FCC's efforts to explicitly provide for utility participation in telecommunications through its adoption of streamlined procedures for those utilities subject to the Public Utility Holding Company Act of 1935 (PUHCA) to establish "Exempt Telecommunications Companies" (ETCs). As reflected in the FCC's own records, companies subject to the line-of-business restrictions of PUHCA have taken

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<sup>4</sup> Technology is currently being developed in Europe that is expected to permit transmission of high speed data communications over distribution power lines. UTC understands that because of differences in power system architecture between the European and North American markets, its deployment in the U.S. may be delayed pending additional technology development. Nevertheless, UTC and its member utilities are watching these developments with keen interest. In fact, UTC has organized the UTC Power Line Telecommunications Forum (UTC/PLTF) to review the technical and regulatory issues associated with this promising new technology.

advantage of these procedures to establish separate ETC subsidiaries to offer telecommunications, information, and ancillary services. However, UTC urges the Commission to examine whether these procedures could be further streamlined to obviate the need for a utility subject to PUHCA, or anyone thinking of partnering with such a utility, to “telegraph” its intentions to the world through the ETC application process. Because the Commission has made clear that the grounds for questioning an ETC application are very limited, further streamlining of the application process (to one more akin to a “registration” process) would greatly facilitate opportunities for these utilities and their prospective partners to enter the market.

Aside from the special provisions of the Telecommunications Act dealing with PUHCA, UTC was confident that Section 253, on “removal of barriers to entry,” would be used by the Commission to eliminate any other state or local regulatory restriction to utility entry into telecommunications. However, based on the Commission’s constrained reading of Section 253 in the so-called “Texas” case,<sup>5</sup> UTC is very concerned that the FCC’s decision in that case has sent a signal to incumbent local exchange carriers (ILECs) that they can effectively forestall competitive entry in their markets by lobbying for the passage of state laws that will prohibit the direct or indirect participation of municipalities and municipal utilities in telecommunications. For example, restrictions similar to those at issue in the Texas case have been adopted in Missouri and are currently

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<sup>5</sup> In the Matter of The Public Utility Commission of Texas, FCC 97-346, released October 1, 1997, appeal pending *sub nom.* City of Abilene v. FCC, Nos. 97-1633 *et al.* (D.C. Cir.)



the subject of a preemption petition.<sup>6</sup> It should be apparent to the Commission that, if municipal utility entry into telecommunications were not viewed as a threat by the ILECs, they would not be so active in promoting these blatant barriers to entry. Moreover, these state restrictions have the effect of forestalling competitive entry by third-parties wishing to simply partner with municipal utilities for the construction of competitive communications systems. UTC therefore urges the Commission to act decisively in striking down such laws, and to reaffirm that the 1996 Telecommunications Act was intended to open the telecommunications market to competition by any entity.

For those utilities that are permitted to enter the telecommunications market and which are subject to regulation by state utility commissions, there is a disturbing trend among state commissions of regulating affiliate transactions in such a manner as to effectively disadvantage utility participation in the telecommunications market. Despite the myriad benefits that utility entry can bring to telecommunications, undue emphasis is being placed on identifying and eliminating any potential for “cross-subsidization” without regard to the likelihood of such activity.

Utilities contemplating entry into telecommunications find themselves in the unique position of straddling two regulated industries, both of which are typically regulated by the same agency. Utilities operating in multiple states face the additional challenge of meeting multiple state regulatory restrictions. While state regulators seem to

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<sup>6</sup> Petition of Missouri Municipal League, CC Docket No. 98-122. UTC incorporates by reference its arguments in support of strong federal preemption as contained in its Comments in CC Docket No. 98-122, filed August 28, 1998.

be adjusting generally to the new “barrier-free” environment created by the 1996 Telecommunications Act, there is also a general reluctance to let go of more stringent regulations as applied to utility entry. Such restrictions might have relevance in the context of a regulated entity entering a closely-allied non-regulated business, but they offer little practical benefit to consumers where the businesses are as distinct as energy and telecommunications, and where there is a strong, overriding national policy in favor of open entry into telecommunications. In fact, consumers are the ultimate victims of such restrictions since these regulations will either deter utility entry into telecommunications, or will impose unnecessary administrative and transaction costs, which are ultimately borne by consumers. UTC therefore urges the Commission to adopt strong national policies, and to exercise its preemption authority where necessary, to ensure reasonable and consistent regulatory approaches that will promote utility participation in the telecommunications market.

Finally, UTC urges the Commission to forbear from applying draconian and heavy-handed regulation to the use and management of utility infrastructure, including poles, ducts, conduits and rights-of-way. Pursuant to Section 224 of the Communications Act, utilities are required to afford non-discriminatory access to such infrastructure. In addition, where the parties fail to agree, and where such matters are not regulated by a state, the Commission is authorized to regulate the rates, terms and conditions for attachments to such facilities. In response to changes in Section 224 adopted as part of the 1996 Telecommunications Act, the Commission has initiated several proceedings and

has adopted a number of detailed regulations and “guidelines” for resolving such disputes.<sup>7</sup>

Ironically, experience has shown that the more detailed and onerous the FCC’s regulation of such facilities, the more difficult it is for the parties to reach agreement. When one party to a “negotiation” enters the discussion with demands for unfettered access and offers of only minimal compensation based on depreciated “historical costs,” there is little bargaining room and no incentive to do anything more than what is absolutely required under the express terms of the Commission’s rules. Moreover, and despite the fact that the Act and its legislative history call for FCC regulation only when the parties fail to reach an agreement, the Commission has yet to clearly state that it will allow parties to freely contract in this area without concern that one of the parties can ask the agency to “undo” the agreement and eliminate any bargain the parties might have struck. Given the overarching intent of the Act to eliminate regulation and to rely on marketplace forces, UTC urges the FCC to forbear from regulating in this area to the greatest extent possible in order to incentivize utilities to make their assets available for the construction of competitive telecommunications networks.

**WHEREFORE, THE PREMISES CONSIDERED,** UTC, The Telecommunications Association, respectfully requests the Federal Communications Commission to take action in this docket consistent with the views expressed herein.

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<sup>7</sup> CC Docket No. 96-98; CS Docket No. 97-98; and CS Docket No. 97-151.

Respectfully submitted,

UTC

By:

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**RECENT NEWS SUMMARIES**  
**OF**  
**UTILITY TELECOMMUNICATIONS VENTURES**  
(From the *UTC Business Wire*)

**Joint Venture to Provide Telephone Services Between Allegheny Power and Hyperion.** Allegheny Power, an investor owned utility which provides electricity to 1.4 million customers in Maryland, Ohio, Pennsylvania, Virginia and West Virginia, has entered into a partnership with Hyperion Telecommunications, a competitive local exchange carrier (clec) subsidiary of Adelphia Communications Corporation. The partnership, to be called Allegheny Hyperion Telecommunications, LLC will focus on providing competitive telecommunications services which would include high-capacity dedicated telecommunications services between business and commercial locations; services connecting business locations with long-distance carriers; and local telephone service. According to the agreement, Allegheny Power will construct the fiber optic network through its affiliate, Allegheny Communications Connect, Inc., which will partner with Hyperion in most of the contemplated networks. (Dec. '97)

**Enron Expands Telecommunications Network.** Enron Corp., a Houston-based integrated natural gas and electricity company, has acquired OPTEC, a Portland, Oregon-based provider of data communications integration and services. OPTEC will work with Enron's FirstPoint Communications subsidiary on plans to build a high bandwidth, fault-tolerant fiber optic network from Portland to Los Angeles, which is a joint venture with the Williams Companies and Montana Power. FirstPoint and OPTEC will maintain headquarters in Portland Oregon.  
(Dec. '97)

**Enron and Michigan South Central Power to Form Strategic Alliance.** Enron Capital and Trade and the Michigan South Central Power Agency (MSCPA) have signed a letter of intent to form a strategic alliance to provide enhanced services, including advanced telecommunication services, to MSCPA customers. (Jan. '98)

**American Electric Power Subsidiary to Link with Allegheny Energy Affiliate.** An American Electric Power subsidiary with exempt telecommunications company (ETC) status, AEP Communications has announced a plan to connect fiber optic networks with Allegheny Communications Connet, Inc., an affiliate of Allegheny Energy which has also been granted ETC status. The two companies will connect their networks and jointly market high-speed, broadband communications services to telecommunications companies serving West Virginia. They intend to complete the interconnection during the fall of 1998 at which time communications carriers will be able to lease DS-1, DS-3 and higher-level SONET communications services. The partnership is still subject to regulatory approval from the West Virginia Public Service Commission. (Aug. '98)

**Missouri Utility to Invest in CLEC.** Missouri utility, St. Joseph Light & Power Co. announced its intention to invest in competitive local exchange carrier (CLEC) ExOp of Missouri, Inc. ExOp, which provides local, long distance and Internet services, is also constructing a high-speed digital network for ISDN and asymmetric digital subscriber line (ADSL) services.(Aug. '98)

**Citizens Utilities to Acquire Rhinelander Telecommunications.** Citizens Utilities, which owns 83% of Electric Lightwave, recently announced its intention to acquire Wisconsin-based diversified telecommunications company, Rhinelander Telecommunications in a cash-for-stock deal. The acquisition of Rhinelander, which provides local exchange, long distance, Internet, wireless and cable television services, would allow Citizens to continue the expansion of its national telecommunications footprint, and allow it to offer its customers bundled services. The acquisition is expected to be complete by the end of 1998.

**DukeNet Communications Increases Fiber Optic Network Capacity.** DukeNet Communications, the telecommunications arm of global energy company, Duke Energy Corporation will increase the capacity of its network which serves the wholesale telecom needs of its carrier customers in the Southeastern US. It will install an OC-48 transport node, using a Dense-Wavelength Division Multiplexing (D-WDM) 16-wavelength configuration that will be service-ready to carry 40 Gbps of voice, data and video on a single fiber. DukeNet's communication cables are embedded in the overhead ground wire of Duke Electric Transmission's system. (July '98)

**Conectiv Communications Launches High-Speed Data Transport Services for Businesses.** Conectiv Communications, which is part of the Conectiv family of companies formed by the merger between Delmarva Power & Light Company and Atlantic Energy, launched three new high-speed data transport services last week. The services are ISDN PRI, DS-1, and a customized DS-3. In particular, ISDN PRI will work to transmit voice, data and video over the public switched telephone network and is expected to offer greater flexibility to commercial customers with heavy voice and data transmission needs. These services will be added to other Conectiv Communications services which combine to offer residential and business customers local, regional toll and long distance services. (June '98)

**Williams Purchases Minority Interest in UtiliCom Networks.** Williams Communications, has purchased a minority interest in Massachusetts-based UtiliCom Networks, a company which enables electric and gas utilities to diversify into the competitive telecommunications services industry. Through marketing and service agreements, Williams will also serve as the preferred vendor of telecom services for UtiliCom's joint ventures, allowing it to design and engineer high-capacity, two-way broadband networks for UtiliCom's utility partners in select areas. It will also provide an

opportunity for Williams to furnish integrated communications equipment and services to the utilities' business customers. (May '98)

**Cities in Kentucky Approve Plan for Broadband Network.** Officials from the cities of Erlanger and Fort Wright, KY have approved a plan intended to create a broadband telecom network joining 11 northern Kentucky cities. The "interlocal agreement" was proposed by the Northern Kentucky Telecommunications Authority and approved this week by the two cities who hope to use the network to bring in new technology and increase competition. It is expected that the initial revenues from the service will be directed back into the project which would serve several Cincinnati-area communities. (May '98)

**Starpower Communications Files Notice of Intent For OVS.** Starpower Communications LLP, a joint venture between an unregulated subsidiary of PEPCO Communications and RCN Corp., recently announced that it has filed a "notice of intent" to build open video systems (OVSs) in the Washington Metro Area. The FCC had approved its application for OVS certification in January (see *Wire* Feb. 3). Following FCC rules, Starpower plans to reserve 110 of the 330 6-MHz channels for its own use, allotting 13 channels for public educational and governmental access, and leaving 207 channels available to other programmers. (April '98)